

because it offers an efficient competitor a *meaningful opportunity to compete*.³⁹

- There must exist specific performance standards for OSS functions (either adopted by a state commission in an arbitration decision or unilaterally adopted by the BOC outside of its interconnection agreement).⁴⁰

As Intermedia demonstrates in these comments, BellSouth's provision of access to OSS does not satisfy the requirements the Commission has recently found to be critical in determining BOC compliance with the 1996 Act. Indeed, this conclusion is supported by the recent public statements of high-ranking BellSouth executives. For example, David Markey, BellSouth's Vice President for Governmental Affairs, recently acknowledged that "[BellSouth's] application isn't likely to meet all of the standards for interLATA market clearance outlined by the [FCC]."⁴¹

1. BellSouth has not Demonstrated that the OSS Access Provided to Competing Carriers is Equivalent to the OSS Access it Provides to Itself in Terms of Quality, Accuracy, and Timeliness.

As a preliminary matter, Intermedia notes that BellSouth's OSS processes are the same across BellSouth's territory. As BellSouth affiant Keith Milner acknowledges in his

³⁹ *Ameritech-Michigan Order*, at ¶ 141.

⁴⁰ *Ameritech-Michigan Order*, at ¶ 141.

⁴¹ "BellSouth Plans to Apply Under Track B," TR Daily, Sept. 29, 1997. *See also* "BellSouth 'Wouldn't Be Surprised by FCC Rejection of Sec. 271 Bid in S.C.," Communications Daily, Vol. 17, No. 177, Sept. 12, 1997; "BellSouth Says OSS System Meets Act's Mandates, Disputes Areas of FCC Ruling on Ameritech Bid," TR Daily, Sept. 11, 1997. These reports are attached hereto and incorporated herein by reference collectively as **EXHIBIT 2**.

affidavit, "BellSouth's processes are identical in all nine states for ordering, provisioning, maintaining and repairing and rendering a bill."⁴²

BellSouth's uses an integrated preordering and ordering system when it places its own orders. In contrast, competing carriers are offered separate interfaces for preordering and ordering. For example, to place an order for a loop, a CLEC would need to validate the customer address through the Local Exchange Navigation System ("LENS"). Then, to place the actual order, the CLEC must use the Electronic Data Interchange ("EDI") system. In contrast, BellSouth can obtain preordering information and place an order at the same time using the Regional Negotiation System ("RNS"). Moreover, unlike BellSouth's integrated system, LENS does not interact or communicate directly with the CLEC's own OSS. Although BellSouth asserts that the CLEC could choose to integrate the data from LENS with the CLEC's OSS by taking the information available through LENS and putting it into the CLEC system,⁴³ the processes involved are onerous, cumbersome, and time-consuming. For example, BellSouth suggests that information from the LENS system can be "migrated" to the CLEC OSS through cut-and-paste.⁴⁴ This process of moving from one system to another takes significant time and effort. The amount of time wasted and human resources consumed expands proportionately as the number of CLEC orders increases. Other solutions offered by BellSouth would require the CLECs to develop software to move information from LENS to the CLECs' OSS.

⁴² Affidavit of W. Keith Milner, at 2.

⁴³ Affidavit of William N. Stacy, at 13.

⁴⁴ *Id.*

Moreover, the interfaces provided by BellSouth to itself generally are better, if not altogether superior, than those provided to CLECs. For example, through EDI, a CLEC cannot validate an address. In contrast, through RNS and the Direct Order Entry ("DOE") system, BellSouth can validate addresses. A CLEC cannot obtain customer service record ("CSR") information from EDI. In contrast, BellSouth can obtain CSR information through RNS. A CLEC cannot calculate a due date via EDI. In contrast, RNS and DOE can calculate a due date. The record in this proceeding will clearly demonstrate that BellSouth does not provide access to OSS at parity.

Similarly, BellSouth has not demonstrated--nor can it--that the amount of time required of CLECs to process an order using LENS or EDI is comparable to the time it takes BellSouth to process a similar order using DOE or RNS. In fact, in the recently concluded Alabama Section 271 proceeding, BellSouth has acknowledged that it cannot make that comparison.⁴⁵

Q: But there's no data in the record to be able to substantiate that the [OSS] access is provided in the same time, is there, or manner?

A: Well, in terms of the actual measurements of how many seconds or tenths of a second might be involved, no. . . .⁴⁶

BellSouth has even suggested in other state proceedings that it meets its OSS obligations "by giving real-time interactive access to the same data bases from which

⁴⁵ See Calhoun Testimony, Alabama Hearing Transcript, at 767 (excerpts are attached hereto and incorporated herein by reference as **EXHIBIT 3**).

⁴⁶ Calhoun Testimony, Alabama Hearing Transcript, at 764 (excerpts are attached hereto and incorporated herein by reference as **EXHIBIT 3**).

BellSouth obtains its pre-ordering information."⁴⁷ That, however, is insufficient in and of itself. Without a demonstration that there is equivalent access to OSS in terms of quality, accuracy, and timeliness, BellSouth has not demonstrated nondiscriminatory access to OSS.

2. Intermedia's Experience is Unequivocal Proof that BellSouth Has Not Established Systems that Will Process Orders for Unbundled Network Elements and Resale Services in a Reasonable, Timely, and Nondiscriminatory Manner.

There can be no better demonstration of the deficiencies in BellSouth's OSS provisioning than Intermedia's actual, first-hand experience with BellSouth's ordering process.

Intermedia placed an order for an unbundled DS1 circuit in May of 1997, following the ordering process suggested by BellSouth. Despite totally adhering to the suggested ordering process, Intermedia's order was referred to, and transferred from, one BellSouth organization to another, with the ultimate effect of severely delaying the process. It took BellSouth six weeks to provide the DS1 circuit. In contrast, BellSouth's retail customers can obtain a DS1 service from BellSouth in one or two weeks.

Subsequent to this experience, BellSouth assured Intermedia that subsequent orders from Intermedia would be processed more efficiently and in a timely manner. Despite these assurances, however, Intermedia continues to experience the same problems it encountered when it placed its first DS1 order in May 1997. In particular, Intermedia placed a DS1 order on October 1, 1997. Subsequent to this, Intermedia was advised that the order could not be handled by the LCSC, and that the order should instead be handled by the

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Calhoun Testimony, Alabama Hearing Transcript, at 766 (excerpts are attached hereto and incorporated herein by reference as **EXHIBIT 3**).

ICSC. Subsequent communications revealed that BellSouth had misplaced the initial order, which required Intermedia to fax the order again to BellSouth. As of today--and in part because of BellSouth's (and the LCSC's) inability to provide accurate ordering information to Intermedia--BellSouth has not provisioned the circuit. This shows that, not only cannot BellSouth process orders from CLECs in a timely manner, but that the performance of BellSouth's LCSC continues to be deficient despite claims by BellSouth to the contrary.

Similarly, although BellSouth has committed to confirming orders for services and unbundled network elements within forty-eight hours of submission,⁴⁸ Intermedia's experience shows that BellSouth consistently misses its commitments. For instance, of 552 service orders placed by Intermedia throughout the BellSouth region between August 9 and October 7, 1997, 204 orders or 37% of the aggregate, have never even been acknowledged by BellSouth to date, despite the fact that some of the orders are well over two months old. Intermedia's experience in the entire BellSouth region is mirrored in South Carolina where, of sixteen service orders placed by Intermedia during the same timeframe as above, Intermedia never received confirmation on four of them, or 25% of the aggregate orders.⁴⁹

3. BellSouth has No Formal Processes in Place for Informing Competing Carriers of Changes in OSS Interfaces.

Of critical importance to competing carriers is the ability to receive up-to-date information on OSS functionalities as changes occur. BellSouth relies on conferences and the

⁴⁸ Even if BellSouth is able to provide confirmation within 48 hours, as BellSouth claims, this alone is insufficient to demonstrate that there is parity with respect to OSS access.

⁴⁹ A spreadsheet containing these data is attached hereto and incorporated herein by reference as **EXHIBIT 4**.

account teams serving the CLECs to apprise them of changes in the interfaces.⁵⁰ These methods of information dissemination are unreliable and ineffective. The first method presumes that CLECs will always have representatives at conferences conducted by BellSouth. Considering the limited resources of smaller CLECs, it may not always be possible for them to send representatives to conferences. The second method presumes that BellSouth's account representatives will always have up-to-date information. Intermedia's experience proves that this is not always the case.

BellSouth acknowledged in the Georgia Section 271 proceeding that a more formalized process for communicating interface changes to CLECs is needed on a going-forward basis:

Q: Are there mechanisms in place for informing the ALECs [CLECs] of changes in [BellSouth's] interfaces?

A: The way that the changes in the LENS interface have been communicated thus far have been in what appear to me--I don't have a schedule but in thinking about the schedule it looks like we've been having regular meetings with the ALECs--conferences in which the ALECs have been invited and provided updates to the LENS User Guide and also disseminating information through the account teams. I would expect a more formalized process as we go forward.⁵¹

Similarly, in the Alabama Section 271 proceeding, it became even more evident that BellSouth does not yet have a formal process for keeping CLECs apprised of critical changes in the OSS interfaces:

⁵⁰ Affidavit of William N. Stacy, at 39.

⁵¹ Calhoun Testimony, Georgia Hearing Transcript, at 3582 (excerpts are attached hereto and incorporated herein by reference as **EXHIBIT 5**).

Q: Does BellSouth have a process in place that gives ALECs certain--a process that relates to how much advanced notice ALECs would have for upcoming updates to LENS?

A: I don't know that that's been formalized, if you will. . . .

Q: Is there a formal schedule for notifying ALECs of the changes, though? Like two weeks before an update is made, all ALECs are notified of the change, of the pending change?

A: I'm not aware that that's been implemented across the account teams, but I can't say that there isn't one. I can't say that there is.⁵²

Despite a recognition that a more "formalized process" is necessary to keep CLECs apprised of changes in the OSS interfaces, BellSouth has not, to Intermedia's knowledge, even begun to create the necessary processes, let alone implement them. The lack of a formalized process was evident in the cross-examination of a BellSouth witness in Alabama:

Q: And as I understand it, there are changes planned to LENS all the way to the end of the year; is that correct?

A: Yes. Primarily for the ordering functionality in LENS.

Q: Has BellSouth provided any notice to ALECs of what those changes would be to the end of the year?

A: I know there's been correspondence between AT&T and the BellSouth project manager about those.

Q: Do you know has BellSouth provided a list of anticipated changes to LENS to the end of the year?

⁵²

Calhoun Testimony, Alabama Hearing Transcript, at 922-923 (excerpts are attached hereto and incorporated herein reference as **EXHIBIT 3**).

A: I don't know.⁵³

Several things are evident from the exchange cited above. First, it does not appear that other CLECs have been informed of the changes. Second, it does not appear that BellSouth has communicated all the changes it anticipates to make for the duration of the year, even though BellSouth evidently already knows what the changes will be. This is suggestive of BellSouth's confused and confusing approach to providing access to its OSS. Competing carriers need up-to-date OSS information in order to compete meaningfully and at parity with BellSouth. Unless and until BellSouth has a process in place for disseminating information relevant to its OSS, BellSouth has not demonstrated nondiscriminatory access to OSS and associated processes.

4. BellSouth's Own Commissioned Study Demonstrates that BellSouth's Order Processing System Provides Inferior Service to Competitive Carriers.

Through the discovery process in several State Section 271 proceedings, Intermedia discovered a BellSouth-commissioned study that evaluated the quality of service provided by BellSouth's Local Carrier Service Center ("LCSC"). The LCSC processes orders for certain CLEC orders. As discussed below, reports discovered by Intermedia demonstrate an LCSC that is ineffective and dysfunctional. Moreover, although BellSouth will claim that these problems have been resolved, Intermedia's recent experience demonstrates otherwise. Instead, this experience shows the LCSC's continuing inability to process orders timely, accurately, and at parity with BellSouth.

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Calhoun Testimony, Alabama Hearing Transcript, at 720-721 (excerpts are attached hereto and incorporated herein by reference as **EXHIBIT 3**).

a. The function of the LCSC.

The Local Carrier Service Center ("LCSC") is a critical part of BellSouth's operations support systems. The LCSC is the organization within BellSouth that handles all CLEC orders for unbundled network elements and resold services that are processed manually. This includes the processing of orders for all complex unbundled network elements and services; and all types of orders that are rejected by BellSouth's automated interfaces. For example, orders submitted by CLECs through either EDI or LENS are first checked for errors by BellSouth's Local Exchange Ordering ("LEO") database. If the order passes the edit check, LEO will pass the order to BellSouth's Local Exchange Service Order Generator ("LESOG") for mechanized order generation; orders that do not pass the edit check are passed on to the LCSC for further handling. For complex services, the LCSC's role is even more critical. For example, the ordering processes for unbundled DS1 loops--which Intermedia has requested from BellSouth--or for unbundled data circuits such as HDLC and ADLC--which BellSouth has included in its SGATC--requires the LCSC, acting on behalf of the CLEC, to type the final service order into the ordering system.

The following excerpts from William Stacy's affidavit demonstrates the importance of the LCSC:

- * Voluminous Customer Service Record ("CSR") information is faxed by the LCSC to CLECs (as opposed to being obtained via LENS).⁵⁴

⁵⁴

Affidavit of William N. Stacy, at 12.

- * If a UNE order is received via EDI or manually, it will be manually entered by the LCSC into DOE for service order generation.⁵⁵
- * Non-mechanized orders are routed to the LCSC for handling.⁵⁶
- * Orders requiring manual handling are stored on the databases where the LCSC service representative retrieves the request.⁵⁷
- * The LCSC service representative receives the error data and pulls up the associated service order.⁵⁸

The LCSC processes only orders submitted by CLECs. Orders for retail services that BellSouth provides to its customers are processed by other organizations within BellSouth, such as BellSouth's Data Service Center, which processes orders for BellSouth's DS1 service and other data-oriented retail services.

As Intermedia discusses below, however, reports commissioned by BellSouth on the performance of its LCSC demonstrate that BellSouth is currently incapable of processing CLEC orders for network elements and resale services in a reasonable and nondiscriminatory manner.

b. The LCSC is a Critical Determinant of the Quality of Service BellSouth Provides to CLECs.

Because the LCSC plays such a major role in BellSouth's ability to provide nondiscriminatory access to unbundled network elements and resale services, it is critical that

⁵⁵ *Id.*, at 18.

⁵⁶ *Id.*, at 24.

⁵⁷ *Id.*, at 25.

⁵⁸ *Id.*, at 25.

the BellSouth employees comprising the LCSC have the necessary skill level and competence to fulfill their important function. Moreover, if BellSouth is to provide network elements and resold services to CLECs in a manner that is at parity with the service BellSouth provides to itself and its own customers, the LCSC must function in a manner that is equivalent to the Data Service Center and other organizations that process retail service orders within BellSouth.

Indeed, BellSouth witness Calhoun has testified in Alabama that the quality of service provided by the LCSC impacts BellSouth's ability to provide service to CLECs at parity with BellSouth:

Q: [W]ould you agree or disagree with the statement that the quality of service provided by the LCSC will affect the ordering -- the ordering standards provided by BellSouth for ALECs vis-a-vis retail customers?

A: Yes, certainly, that is one part of the quality of overall service.⁵⁹

Similarly, BellSouth witness Scheye acknowledged in the same proceeding that the performance of BellSouth personnel in the LCSC is a component in determining how quickly BellSouth provides network elements and other services to CLECs.⁶⁰

As Intermedia discusses below, documents produced by BellSouth abundantly demonstrate that the LCSC is understaffed, undertrained, and otherwise lacks the requisite level of skills necessary to support the CLECs. These reports substantiate the complaints of

⁵⁹ Calhoun Testimony, Alabama Hearing Transcript, at 954 (excerpts are attached hereto and incorporated herein by reference as **EXHIBIT 3**).

⁶⁰ Scheye Testimony, Alabama Hearing Transcript, at 1379-80 (excerpts are attached hereto and incorporated herein by reference as **EXHIBIT 5**).

Intermedia and other CLECs that BellSouth is providing them with service that is inferior to that which BellSouth provides to itself and to its retail customers, and compel the conclusion that BellSouth cannot meet the OSS standards established by the 1996 Act and by the Commission.

c. Reports Commissioned by BellSouth Demonstrate that the LCSC Provides Inferior and Discriminatory Service to CLECs.

As stated previously, in response to discovery requests in several State Section 271 proceedings, BellSouth produced copies of a series of BellSouth-commissioned reports conducted by an outside consultant that examined the functioning of BellSouth's LCSC.⁶¹ The series consists of an initial evaluation of the LCSC conducted on March 13, 1997, and follow-up reports dated April 23, July 8 and August 15, 1997 (attached hereto and incorporated herein by reference collectively as **EXHIBIT 7**). These reports paint a picture of an LCSC that is understaffed, whose personnel are inadequately trained and supervised, and whose proficiency in processing orders from CLECs is astoundingly inadequate.

The March 13 report reflects a 10-day audit of LCSC activities conducted by the consultant between March 3 and March 13. The results of the audit compelled the consultant to report the following conclusions:

- * During the entire 10-day period, no supervisor was ever seen training a member of the LCSC staff.⁶²

⁶¹ These reports were entered into the record of the Florida, Alabama, and North Carolina Section 271 proceedings. BellSouth has waived confidentiality of these documents.

⁶² March 13 report, at 002772, 002775.

- * Supervision is ineffective.⁶³
- * Employees are undertrained and deficient in skills.⁶⁴
- * "Excessive errors and rework are lowering the quality of your service due to missed dates and excessive lead times."⁶⁵
- * The current level of errors is alarming due to the low volume level and the fact that current employees whom we studied have been on their current jobs from four months to a year."⁶⁶
- * No systems are in place to "evaluate performance by individual or work group."⁶⁷

After receiving this initial report, BellSouth hired the consultant to establish new work flow processes, training programs and other measures to improve LCSC performance. The subsequent reports from the consultant state that significant progress has been made, and that many of the problems identified in the March 13 report have been fixed.⁶⁸ Even if this is the case--and there is no evidence in the record of this proceeding to substantiate this claim--the later reports still identify a grossly inadequate level of performance. For example, the July 8 report states that the "Percent of calls abandoned is

⁶³ March 13 Report, at 002775 - 002777.

⁶⁴ March 13 Report, at 002773.

⁶⁵ March 13 Report, at 002773.

⁶⁶ March 13 Report, at 002773.

⁶⁷ March 13 Report, at 002786.

⁶⁸ Subsequent reports are self-evaluation of the consultant's performance and have not been verified by an independent entity. These statements alone are inadequate to meet BellSouth's burden of proof that its LCSC processes CLEC orders in a reasonable and nondiscriminatory manner.

about 17%." ⁶⁹ While this is reported as a 23% *improvement* over the preceding month, this figure still indicates a wholly inadequate level of service to CLECs.

Similarly, the July 8 report states that, of all the requests for service submitted by AT&T and MCI during the week of June 25, 64.6% *of the orders were rejected* and returned to AT&T and MCI. ⁷⁰ The report further states that, on average, MCI and AT&T *had to resubmit the orders 1.7 times before they were finally processed.* ⁷¹ The report does not mention the quality of service provided to CLECs other than AT&T and MCI. While the consultant issued another report on August 15, 1997, that report did not address the percent of CLEC orders that were rejected and the average resubmission rate. Therefore, the data provided in the July 8 report is the most recent data in the record of this proceeding. ⁷²

The most recent report was issued on August 15, 1997. While it states that many of the earlier-reported problems in supervision, work flow processing, and employee training have been fixed, the report makes clear that the new systems have not been

⁶⁹ July 8 Report, at 5.

⁷⁰ July 8 Report, at 2.

⁷¹ July 8 Report, at 2.

⁷² In addition, the July 8 report notes that the measures of LCSC performance that are documented employ both real orders and fictitious orders used as a work simulation. July 8 Report, at 5. The report does not identify what percentage of the orders reflected in the tests represents fictitious, as opposed to real orders. The August 15 report, however, does indicate that the level of fictitious orders is 10-17%. August 15 Report, at 8. It is impossible to tell from the report if this level of fictitious orders skewed the service quality measurements included in the reports, and resulted in more favorable performance than a test based entirely on real orders.

implemented yet. The report states that "we are developing" a new training organization;⁷³ that key employees "will report" to department heads;⁷⁴ a copy of a new Procedures Manual "will be prepared" for a manager;⁷⁵ a Performance Improvement Plan "is still in process";⁷⁶ and that 50 additional service representatives will be hired.⁷⁷ As the language of the report makes clear, most of the systems and processes have yet to be fully implemented, and the LCSC is not yet fully staffed. In fact, the final report made available by BellSouth does not even pretend to have evaluated a fully staffed LCSC operating under the new systems and procedures that are intended to remedy the gross deficiencies identified in the March 13 report.

In sum, the reports commissioned by BellSouth provide compelling evidence that the quality of service provided to CLECs out of BellSouth's LCSC is grossly deficient, and clearly inferior to the standards of order processing that BellSouth provides to itself and its retail customers. Moreover, Intermedia notes that the tests conducted in the latter reports have not been subject to review or confirmation by the State commissions or by any interested parties. The record therefore presents a *prima facie* case that the BellSouth LCSC is inadequate to provide reasonable and nondiscriminatory service to CLECs.

⁷³ August 12 Report, at 3.

⁷⁴ August 15 Report, at 3.

⁷⁵ August 15 Report, at 4.

⁷⁶ August 15 Report, at 5.

⁷⁷ August 15 Report, at 8.

d. Results of the LCSC Study Demonstrate that BellSouth's LCSC Fails to Meet the OSS Standards Established by the Commission for Section 271 Authorization.

In the *Ameritech-Michigan Order*, the Commission established the standard of performance it requires of a BOC's operations support systems before 271 authority can be granted:

In assessing a BOC's operations support systems, we conclude that it is necessary to consider all of the automated *and manual processes* a BOC has undertaken to provide access to OSS functions to determine whether the BOC is meeting its duty to provide nondiscriminatory access to competing carriers.⁷⁸

* * *

For example, although the Commission has not required that incumbent LECs follow a prescribed approach in providing access to OSS functions, we would not deem an incumbent LEC to be providing nondiscriminatory access if limits on the processing of information between the interface and the legacy systems prevented a competitor from performing a specific functions in substantially the same time and manner as the incumbent performs that function for itself.⁷⁹

The BellSouth-commissioned reports on the functioning of its LCSC clearly demonstrate an order processing system that is inferior to the internal systems the BellSouth employs to provide services to its own retail customers. The original analysis conducted on March 13 illustrates a department that is in complete disarray, and is wholly incompetent to process CLEC orders. While subsequent reports indicate substantial improvement over the state of the LCSC in March of this year, they still demonstrate levels of service to CLECs

⁷⁸ *Ameritech-Michigan Order*, ¶ 134 (emphasis added).

⁷⁹ *Ameritech-Michigan Order*, ¶ 135.

that are fundamentally unacceptable: the most recent studies show that 65% of the orders submitted by AT&T and MCI were rejected, and that, on average, they had to be resubmitted almost two times. This is not the same quality of service that BellSouth provides to its access and end-user customers. Moreover, the reports that many of the problems identified with the LCSC on March 13 are based on studies that include fictitious test orders as well as real orders submitted by CLECs.

In short, the LCSC reports commissioned by BellSouth fully support the statements by Intermedia and other CLECs that BellSouth is not processing their orders for unbundled elements and resold service in a reasonable and timely manner, and that the service they obtain from BellSouth is inferior to the service BellSouth provides to itself and its retail customers.

Moreover, as Intermedia stated previously, Intermedia continues to experience the same problems it has encountered in the past. In particular, despite assurances from BellSouth that the problems associated with its OSS have been rectified, Intermedia's recent experience in placing a DS1 order--which order has yet to be provisioned several weeks after the order was initiated--demonstrates that this is not the case. This is recent and unequivocal evidence that the problems with LCSC identified before have not been resolved to date. BellSouth bears the burden of proof in demonstrating that it is providing nondiscriminatory access to the operations support systems necessary to provide CLECs with unbundled network elements and resale services.⁸⁰ It is incumbent upon BellSouth to demonstrate that the inferior functionality of the LCSC identified in its commissioned reports has been

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See Ameritech-Michigan Order, at para. 132.

rectified, and that the LCSC is processing orders with the same speed and competence that its Data Service Center and other internal order processing organizations process orders for BellSouth's retail services. BellSouth has not even attempted to meet this burden, and the record in this proceeding provides no data that allows a responsible comparison between BellSouth's internal order processing functions and those performed by the LCSC. Absent a showing that BellSouth's internal organizations function at parity with the LCSC, the Commission is compelled to find that BellSouth has failed to demonstrate nondiscriminatory access to its OSS, and so fails to meet the requirements for 271 authorization.

e. Intermedia's Experience Shows that the LCSC Problems Identified in the Study have not been Fully Addressed.

BellSouth likely will assert in this proceeding that the problems identified in the LCSC study have been fully addressed. This is, however, contradicted by Intermedia's recent experience. As explained previously, 204 of the 552 orders placed by Intermedia between August and the early part of October, 1997, have not even been acknowledged by BellSouth. In South Carolina alone, four out of 16 orders have not been acknowledged.

Similarly, Intermedia's recent experience with DS1 orders demonstrate that BellSouth's OSS processes are still severely flawed and inadequate. In particular, when Intermedia placed its first order for a DS1 circuit in May 1997, it took BellSouth at least six weeks to provision the circuit. Subsequent to that first order, BellSouth assured Intermedia that Intermedia's subsequent orders would be processed more efficient and in a timely manner. Intermedia placed another order for a DS1 circuit on October 1, 1997. To date, BellSouth has not provisioned the circuit, and Intermedia is experiencing the same problems it encountered when it placed its first DS1 order. Equally important, Intermedia continues to

receive conflicting information from BellSouth with respect to order processing. This recent experience demonstrates that the problems identified in the LCSC study have not been rectified to date, despite BellSouth claims to the contrary.

C. BellSouth Fails to Provide Certain Unbundled Network Elements, as Required by the 1996 Act.

Section 271(c)(2)(b)(ii) imposes upon BellSouth the obligation to provide nondiscriminatory access to network elements in accordance with the requirements of Sections 251(c)(3) and 252(d)(1). As explained below, BellSouth does not meet its statutory obligations.

The 1996 Act contemplates that competitors will use interconnection and unbundled network elements to provide a whole spectrum of competitive local services, including voice, data, and video. As a competing provider whose network design, service mix, and customer base focus more heavily on data services than on traditional voice services, Intermedia has been interested in the BellSouth services and unbundled network elements that are necessary for the provision of frame relay and other digital data services. Intermedia sought these applications when it first requested from BellSouth data circuits as unbundled network elements. Despite extensive and continued discussions and correspondence with BellSouth personnel, Intermedia still has not been able to obtain unbundled digital loops critical to Intermedia's data services.

Intermedia first requested unbundled data circuits for the provision of its frame relay data service fifteen months ago. In a letter dated September 10, 1996 (attached hereto and incorporated herein by reference as **EXHIBIT 7**), BellSouth stated that it would provide the "unbundled frame relay loop and the unbundled ISDN loop as requested by Intermedia

communications." BellSouth still is not providing unbundled digital loops to Intermedia, but is instead reselling tariffed data services to Intermedia as a makeshift substitute for the unbundled network elements that the 1996 Act requires BellSouth--and that BellSouth has committed--to provide. BellSouth's assertion that it "stands ready to provide [these] items to [Intermedia] *upon request*,"⁸¹ is blatantly misleading and manifestly meaningless. First, it is clear that Intermedia's requests has been outstanding for over fifteen months. Second, Intermedia's experience proves that what BellSouth generally claims to be available is, in reality, available only on paper and not as a practical matter. Unless BellSouth is able to demonstrate that it can actually provide the requested digital loops, the Commission must reject BellSouth's assertion that these network elements are available.

In South Carolina, and in a number of other states, BellSouth filed a Statement of Generally Available Terms and Conditions, that lists rates, terms and conditions for interconnection and unbundled network elements. While BellSouth has listed some digital unbundled loops in its SGATC, it has left out a type of unbundled data loop that Intermedia has requested and that BellSouth committed to provide in its September 10 correspondence. Not only has BellSouth proven itself incapable of providing data circuits to Intermedia, it is not even promising to provide them in its SGATC. Thus, BellSouth's SGATC is incapable of providing data circuits that are critical to such state-of-the-art services as frame relay.

Moreover, statements by BellSouth witnesses in proceedings before several State commissions provide a very disturbing indication that BellSouth may be reneging on its commitment to Intermedia to provide unbundled data loops altogether. For example, during

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Affidavit of W. Keith Milner, at 15 (emphasis added).

cross-examination in Florida, BellSouth witnesses stated that it was BellSouth's position that BellSouth was not obligated to provide any unbundled data loops that were not specifically ordered by a state regulatory commission in an arbitration proceeding. Because Intermedia entered into a voluntarily negotiated interconnection agreement with BellSouth--and did not bring the agreement into arbitration--BellSouth's position suggests that BellSouth will not provide the 56 and 64 kbps data loops that Intermedia has specifically requested, and that BellSouth expressly agreed to provide more than a year ago. Moreover, a BellSouth witness has recently testified that BellSouth is not obligated to provide a digital network interface device ("NID") as an unbundled element, but rather is only obligated to provide an unbundled NID for analog voice circuits.⁸² Intermedia considers these revelations at this late date to be a complete repudiation of BellSouth's earlier commitments to Intermedia, and a blatant contradiction of the understanding that BellSouth and Intermedia have had for over a year.

In conclusion, BellSouth is not providing these services and unbundled network elements, and the same are not available under BellSouth's SGATC. As a result, BellSouth fails to meet the requirement to provide unbundled network elements under item (ii) of the Competitive Checklist.

⁸²

Florida Hearing Transcript, 322 (excerpts are attached hereto and incorporated herein by reference as **EXHIBIT 9**).

never proposed any means by which such local calls could be identified, distinguished from other local calls, and excluded from the measure of local traffic that is subject to mutual compensation.

Moreover, Intermedia has been paying mutual compensation rates for traffic that it terminates on BellSouth's network without regard to whether those calls are made to ISPs or other customers on the BellSouth network. Intermedia has reason to believe that it has in fact been paying compensation to BellSouth for calls terminated to ISPs on the BellSouth network. Indeed, the wording of BellSouth's August 12 letter suggests as much:

Every reasonable effort *will be made* to insure that ESP traffic does not appear on our bills and such traffic should not appear on your bills to us. *We will work with you on a going forward basis* to improve the accuracy of our reciprocal billing processes. The ESP category includes a variety of service providers such as information service providers (ISPs) and internet service providers, among others.⁸⁶

The BellSouth letter, therefore, strongly indicates that BellSouth has been paying--and receiving--mutual compensation for local calls to ISPs in the past, and indicates that exclusion of such traffic from mutual compensation was not the practice or the intent of BellSouth prior to August 12.

This conclusion is also supported in the testimony on the record in the Florida Section 271 proceeding. When questioned about BellSouth's current business practices, BellSouth witness Varner admitted that, when BellSouth's own customers make calls to ISPs

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Bush Letter (emphases added).

D. BellSouth's Refusal to Pay Mutual Compensation for Local Internet Traffic Renders BellSouth Noncompliant with the Interconnection and Mutual Compensation Provisions of Section 271.

Sections 271(c)(2)(B)(i) and 271(c)(2)(B)(xiii) govern BellSouth's obligations with respect to interconnection, reciprocal exchange of traffic, and mutual compensation. The record in this proceeding will demonstrate that BellSouth does not comply with these obligations.

In a letter dated August 12, 1997⁸³ BellSouth informed Intermedia that it will refuse to pay mutual compensation for local calls terminated to ISPs located on Intermedia's network. Intermedia's interconnection agreement with BellSouth contains the broad provision that "[e]ach party will pay the other for terminating its local traffic on the other's network. . . ." ⁸⁴ "Local traffic" is defined as "any telephone call that originates in one exchange and terminates in either the same exchange, or a corresponding Extended Area Service ("EAS") exchange." ⁸⁵ The interconnection agreement does not exclude local calls to Internet service providers, does not limit or restrict the definition of local calls or BellSouth's obligation to provide mutual compensation for them, and contains no discussion of local calls to ISPs. During the negotiations between BellSouth and Intermedia that resulted in their interconnection agreement, BellSouth never once raised the issue of excluding local calls to ISPs from mutual compensation. Similarly, to date, BellSouth has

⁸³ Letter from E.L. Bush to All Competitive Local Exchange Carriers (Aug. 12, 1997) ("Bush Letter") (attached hereto and incorporated herein by reference as **EXHIBIT 10**).

⁸⁴ Intermedia-BellSouth Interconnection Agreement, at 3.

⁸⁵ Intermedia-BellSouth Interconnection Agreement, at 2.

located on BellSouth's network, the calls are treated as local calls, and are charged at R1 and B1 rates out of BellSouth's local services tariff.⁸⁷

The fact that no discussion of excluding local calls to ISPs was ever conducted with Intermedia prior to BellSouth's August 12 letter,⁸⁸ and BellSouth's documented business practices, establish a *prima facie* case that no such restriction was contemplated by BellSouth and Intermedia at the time the interconnection agreement was signed, or during the time it was implemented. As a result, on the basis of the record in this proceeding, the Commission must conclude that BellSouth fails to meet its interconnection and mutual compensation obligations under Sections 271(c)(2)(B)(i) and 271(c)(2)(B)(xiii) of the 1996 Act. The record is *prima facie* case that BellSouth is refusing to pay mutual compensation for local traffic in violation of items (i) and (xiii) of the Competitive Checklist. Until this matter is finally adjudicated, the Commission cannot find that BellSouth meets its obligations under checklist items (i) and (xii) of the Competitive Checklist.

In addition, BellSouth's unilateral refusal to pay mutual compensation for local calls to ISPs violates the terms of the BellSouth-Intermedia interconnection agreement. The interconnection agreement negotiated between BellSouth and Intermedia--and approved by the

⁸⁷ Varner Testimony, Florida Hearing Transcript, at 339 (excerpts are attached hereto and incorporated herein by reference as **EXHIBIT 9**).

⁸⁸ It is interesting to note that only recently has BellSouth begun to assert that it is not obligated to pay mutual compensation for ISP-bound local traffic. For example, nowhere in the supporting testimony filed by BellSouth in the Georgia Section 271 proceeding was there any mention of ISP-related issues. Similarly, Intermedia is unable to find references to ISP mutual compensation issues in the supporting testimony filed by BellSouth in the Alabama Section 271 proceeding.

relevant State Commissions (including South Carolina)--contains a provision that directs the actions that the parties must take if a rate provision of the agreement is in dispute:

Except as otherwise stated in this Agreement, the parties agree that if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the parties will initially refer the issue to the individuals in each company that negotiated the Agreement. If the issue is not resolved within 30 days, either party may petition the Commission for a resolution of the dispute.⁸⁹

On cross-examination in Florida, BellSouth witness Varner admitted that the issue of mutual compensation for local calls to ISPs is currently in dispute, and is the subject of two separate proceedings before this Commission.⁹⁰ This issue is also the subject of complaints filed by CLECs before several State public utility commissions. It is therefore beyond debate that the matter of mutual compensation for ISP traffic is "in dispute," and that under the terms of the interconnection agreement, BellSouth is prohibited from taking unilateral action, but is required to petition the relevant State commission(s) to resolve the matter. Rather than exercise this provision of the interconnection agreement, however, BellSouth has chosen unilaterally to withhold payments for mutual compensation owed to Intermedia, in violation of its contractual and statutory obligations. Thus, BellSouth is refusing to act in accordance with the terms of its interconnection agreement with Intermedia, and is therefore in violation of item (i) of the Competitive Checklist.⁹¹

⁸⁹ Intermedia-BellSouth Interconnection Agreement, at 27.

⁹⁰ Varner Testimony, Florida Hearing Transcript, at 341.

⁹¹ Intermedia notes that BellSouth has the ability to remedy this situation simply by paying the full amount of mutual compensation for the terminating local
(continued...)